

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

July 8, 2011

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST FOR (1) APPROVAL OF THE STATE OF HAWAI'I
CONSERVATION RESERVE ENHANCEMENT PROGRAM
AGREEMENT WITH THE NATIONAL TROPICAL BOTANICAL
GARDEN AND (2) APPROVAL OF A CHAPTER 343, HRS
DECLARATION OF EXEMPTION FROM THE PREPARATION OF
AN ENVIRONMENTAL ASSESSMENT PER CHAPTER 343, HRS

AND

REQUEST FOR DELEGATION OF AUTHORITY TO THE
CHAIRPERSON TO (1) NEGOTIATE, APPROVE AND EXECUTE
STATE OF HAWAI'I CONSERVATION RESERVE ENHANCEMENT
PROGRAM AGREEMENTS WITH ELIGIBLE APPLICANTS; AND (2)
DETERMINE AND APPROVE CHAPTER 343, HRS
ENVIRONMENTAL COMPLIANCE REQUIREMENTS, INCLUDING
APPROVAL OF DECLARATIONS OF EXEMPTIONS, FOR HAWAI'I
CREP PROJECTS

BACKGROUND:

The Hawai'i Conservation Reserve Enhancement Program (CREP) is the state specific amendment to the country's largest private-lands environmental improvement program administered by the U.S. Department of Agriculture's Farm Service Agency. The program was developed by the state to address Hawaii's identified priority lands, environmental issues, and limitations on enrollments. The U.S. Department of Agriculture and State of Hawai'i Department of Land and Natural Resources (DLNR) agreed to jointly implement Hawai'i CREP for eligible landowners and producers that are interested in practicing conservation on their lands.

Under the program, the U.S. Department of Agriculture (USDA) is responsible for determining

participant eligibility for Hawai'i CREP under the national guidelines (2-CRP, Revision 5) and issuing the majority of the available financial incentives for the program. As part of the State of Hawaii's commitment to the program, DLNR also provides participants additional incentive for enrolling in CREP in the form of an annual rental payment, cost-share reimbursement for conservation management practices, and/or assistance with conservation easement transactions. Hawai'i CREP participants are required to enter into a contract agreement with both USDA and DLNR in order to receive program incentives.

In order to expedite participant enrollment, the Division of Forestry and Wildlife worked with the Attorney General's Office to create a State of Hawai'i Conservation Reserve Enhancement Program Agreement template (Template) that mirrors the requirements of USDA contract agreements and authorizes eligible participants to receive the State's primary rental incentive payment. At its November 12, 2010 meeting, Item C-1, the Board of Land and Natural Resources (Board) approved the Template between the State of Hawai'i and CREP participants, and authorized the Chairperson to execute State of Hawai'i CREP Agreements with eligible landowners subject to review and approval as to form by the Office of the Attorney and review of an annual program report to the Board.

DISCUSSION:

In continuing discussion with the Attorney General's Office through the review of a State of Hawai'i CREP Agreement with the National Tropical Botanical Garden, a 501(c)(3) not-for-profit corporation, the Attorney General's Office has recommend that the Division seek approval from the Board for an exemption from the preparation of an environmental assessment for the National Tropical Botanical Garden (NTBG) CREP project as allowed under Chapter 343, Hawaii Revised Statutes (HRS) and Chapter 11-200, Hawaii Administrative Rules (HAR). The NTBG CREP project's environmental evaluation is discussed in the following section.

Additionally, the Attorney General's Office requested that the Division clarify with the Board on the authorization of the Chairperson to not only execute but also approve the State of Hawai'i CREP Agreements with eligible participants. The Board authorized the Chairperson to execute the State of Hawai'i CREP Agreements with eligible applicants based on the Template (Exhibit A) at its November 12, 2010 meeting. As USDA is the responsible party for determining eligibility of Hawai'i CREP participants, it was the Division's intention to seek Board authorization for the Chairperson to approve and execute the State of Hawai'i CREP Agreements in order to allow the Department to implement the program expeditiously in conjunction with its partner agencies. The Division currently, annually briefs the Board on the successes of Hawai'i CREP; provides an annual report on the progress of the program; and seeks any renewals of authority from the Board as needed.

USDA reviews all Hawai'i CREP applicants for conformance to the federal eligibility guidelines in 2-CRP, Revision 5 that authorizes the national program. Under the State of Hawai'i Agreement for the Conservation Reserve Enhancement Program (Exhibit B), the state agreed to provide match for a Hawaii CREP in the form of direct payments to enrolled program

participants as approved by USDA. The NTBG CREP project, as well as other CREP projects, are eligible for an annual rental payment from the DLNR of \$17 per acre per year of enrollment (Hawaii CREP Agreements are for a minimum of 14-15 years). The NTBG CREP project is eligible for a total payment of \$510.00 from state annual rental payments (Exhibit C). With the intention of implementing Hawai'i CREP expeditiously with partners, the Division requests that (1) the Board approve the State of Hawai'i CREP Agreement with the NTBG, a 501(c)(3) not-for-profit corporation, based on the Template approved at the Board's November 12, 2010 meeting; and (2) the Board authorize a delegation of authority to the Chairperson to negotiate, approve and execute the State of Hawai'i CREP Agreements based on the Template approved at the Board's November 12, 2010 meeting, subject to approval as to form by the Attorney General's Office and provided the Division continues to provide an annual progress report on the program.

Further, the Division also requests that the Board authorize the Chairperson to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for Hawai'i CREP projects. The Division currently evaluates all Hawai'i CREP projects for its compliance with Chapter 343, HRS including the requirement of a preparation of an environmental assessment and/or eligibility for a declaration of exemption under the Department's approved exemption list as permitted under Chapter 11-200, Hawaii Administrative Rules (HAR). For projects that are eligible for a declaration of exemption, the Division consults with agencies and individuals having expertise before seeking a project exemption as required under Chapter 11-200, HAR. For projects that require the preparation of an environmental assessment, the Division assists Hawai'i CREP applicants with the development and submission of their project's environmental assessment to the Office of Environmental Quality Control.

The majority of Hawai'i CREP projects are anticipated to have no significant negative environmental impact, and are anticipated to improve environmental health by promoting the restoration of degraded lands with native species. The Board delegation of authority to the Chairperson to determine and approve environmental compliance requirements for Hawai'i CREP projects will allow the Division to expedite the enrollment of Hawai'i CREP participants in conjunction with USDA as well as account for any environmental impacts of Hawai'i CREP projects. The delegation of authority would be subject to the most current Chapter 343, HRS and Chapter 11-200, HAR, as well as issued guidance or instructions from the Office of Environmental Quality Control on environmental evaluation of projects subject to Chapter 343, HRS.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Department has reviewed the NTBG CREP project and determined that it is eligible for a declaration of exemption under the Division's June 12, 2008 Exemption List. The NTBG CREP project is located on a portion of TMK (2)1-3-002:001 that is approximately two acres in size. The CREP project will exclude ungulates from the project area and will establish and maintain a native species riparian forest buffer for the 15 years of their program agreement. The Division

has reviewed this action and determined it falls under the Division's Exemption Class 1 No. 8 - weed, brush and noxious tree control; Exemption Class 3 No. 1 - fences to include areas no greater than 10 acres; and Exemption Class 4 No. 7 - establish temporary or permanent vegetative cover including trees, shrubs and grasses for landscaping, reforestation, soil stabilization, and wildlife habitat. This action is anticipated to have minimal or no significant negative impact on the environment.

In accordance with Chapter 11-200, HAR, the Department has consulted with agencies and individuals having expertise before declaring a project exemption and has received either no comments or no objections to a proposed declaration of exemption. The Division recommends that the Board find the NTBG Hawaii CREP project is exempt from the requirement to conduct an environmental assessment, as provided by Chapter 343, HRS and Chapter 11-200, HAR.

RECOMMENDATIONS:

That the Board:


1. Approve the State of Hawai'i Conservation Reserve Enhancement Program Agreement with the National Tropical Botanical Garden, a 501(c)(3) not-for-profit corporation based on the State of Hawai'i Conservation Reserve Enhancement Program template approved at the Board of Land and Natural Resources November 12, 2010 meeting, Item C-1, and subject to approval as to form by the Office of the Attorney General.
2. Approve a declaration of exemption from the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR for the National Tropical Botanical Garden Hawaii CREP project.
3. Authorize the Chairperson to negotiate, approve and execute the State of Hawai'i Conservation Reserve Enhancement Program Agreements with eligible participants based on the State of Hawai'i Conservation Reserve Enhancement Program template approved at the Board of Land and Natural Resources November 12, 2010 meeting, Item C-1, subject to:
 - a. Review and approval by the Office of the Attorney General, and
 - b. An annual report to the Board summarizing Hawai'i CREP progress by the Division of Forestry and Wildlife.
4. Authorize the Chairperson to determine and approve Chapter 343, HRS environmental compliance requirements for Hawai'i CREP projects, including approval of declaration of exemptions as permitted under Chapter 11-200, HAR.

Respectfully submitted,


Paul J. Conry, Administrator
Division of Forestry and Wildlife

Attachments: Exhibits A and B and C

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

**STATE OF HAWAII
CONSERVATION RESERVE ENHANCEMENT PROGRAM
AGREEMENT**

This Agreement, entered into on _____, 20_____, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (“STATE”), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the _____ (“LANDOWNER”), whose address is as follows: _____

Address

RECITALS

WHEREAS, the purpose of Chapter 195F, Hawaii Revised Statutes (“HRS”), is to establish a program to financially assist landowners in managing, protecting, and restoring important natural resources in Hawaii’s forested and formerly forested lands;

WHEREAS, the objectives of the Agreement between the U.S. Department of Agriculture Commodity Credit Corporation and the State of Hawaii Concerning the Implementation of a Conservation Reserve Enhancement Program for the Islands of Maui, Hawaii, Molokai, Lanai, Kauai, and Oahu dated January 15, 2009, are to enhance stream water quality; reduce coral reef degradation and enhance near shore coastal waters; increase groundwater recharge; restore native, threatened and endangered species habitat; and control the spread of invasive species in upland areas in select areas of each of the six (6) main Hawaiian Islands;

WHEREAS, under HRS § 195F-4(a)(1) money from the Forest Stewardship Fund may be used for payments by the STATE pursuant to agreements made with qualified landowners to further the purposes of Chapter 195F, HRS;

WHEREAS, LANDOWNER owns or controls land on the Island of _____, conducive to the objectives of the Hawaii Conservation Reserve Enhancement Program and desires to enroll in the Hawaii Conservation Reserve Enhancement Program;

WHEREAS, the U.S. Department of Agriculture Natural Resource Conservation Service has completed and approved a Conservation Plan for the LANDOWNER, as set forth in Exhibit A to this Agreement, which the STATE agrees is consistent with the policies, goals, and objectives of the Hawaii Conservation Reserve Enhancement Program;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the LANDOWNER agree as follows:

A. SCOPE OF PERFORMANCE

The LANDOWNER shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the “Scope of Performance” set forth in Attachment 1 and the Conservation Plan set forth in Exhibit A, both of which are hereby made a part of this Agreement.

B. COMPENSATION

The LANDOWNER shall be compensated for performance of the project under this Agreement according to the “Compensation and Payment Schedule,” set forth in Attachment 2, which is hereby made a part of this Agreement.

C. TIME OF PERFORMANCE

The performance required of the LANDOWNER under this Agreement shall be completed in accordance with the “Time Schedule” set forth in Attachment 3, which is hereby made a part of this Agreement.

D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

The “State of Hawaii Certificate of Exemption from Civil Service,” set forth in Attachment 4, is hereby made a part of this Agreement.

E. STANDARDS OF CONDUCT DECLARATION

The “Standards of Conduct Declaration” by LANDOWNER, set forth in Attachment 5, is hereby made a part of this Agreement.

F. OTHER TERMS AND CONDITIONS

The “State of Hawaii General Conditions for Conservation Reserve Enhancement Program” set forth in Attachment 6, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the LANDOWNER have executed this Agreement effective as of the date first above written.

STATE OF HAWAII

Chairperson
Board of Land and Natural Resources

Date: _____

LANDOWNER

By _____

Its _____ *
(Title)

Print Name

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

*Evidence of authority of the LANDOWNER's representative to sign this Agreement for the LANDOWNER must be attached.

LANDOWNER'S ACKNOWLEDGMENT

STATE OF HAWAII)
)
COUNTY OF _____) SS.

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the LANDOWNER named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the LANDOWNER, and acknowledges that he/she executes said instrument as the free act and deed of the LANDOWNER.

Notary Public, State of Hawaii

My commission expires: _____

Notary Seal Affixed:

SCOPE OF PERFORMANCE

1. Project Description

The LANDOWNER shall use funds paid by the STATE from the Forest Stewardship Fund to implement the approved Conservation Plan, which is attached hereto as Exhibit A. The project area to be managed is the _____ Conservation Reserve Enhancement Program project area; TMK NUMBER(S) _____ and designated on the map attached to the Conservation Plan.

2. Performance

The LANDOWNER shall complete the following:

A. Conservation Plan. The LANDOWNER shall carry out the conservation activities set forth in the approved Conservation Plan, attached as Exhibit A to this Agreement.

B. Consultation. The LANDOWNER shall be available for consultation regarding the LANDOWNER's progress with the Conservation Plan, upon request by the STATE.

3. Authority to Enter Into Agreement and Carry Out Conservation Plan

The LANDOWNER hereby represents that the LANDOWNER owns or controls the project area, and that the LANDOWNER has the authority to enter into this Agreement and complete the conservation activities set forth in the Conservation Plan.

4. Reporting and Inspections

A. Reports. The LANDOWNER shall submit to the STATE, reports at the following times:

(i) Initial/First Report. A report shall be due 30 days after the execution of this Agreement. The report shall include a timeline of action for the implementation of the conservation practices set forth in the Conservation Plan and shall include a separate invoice for payment as detailed in the payment schedule in Attachment 2, section 3.A.

(ii) Annual Report. An annual report shall be due on or before July 15 of each year under this Agreement for which funding has been approved. The report shall include a description of the Conservation Plan accomplishments and activities including the initiation of conservation practices, completion of conservation practices, and/or maintenance of conservation practices as described in the Conservation Plan. Following the completion of any conservation practices under this Agreement carried out under the Conservation Plan, the corresponding annual report shall include a detailed accounting of expenditures for each practice.

B. Inspections. The STATE reserves the right to enter upon the LANDOWNER's property for the purpose of inspecting the Conservation Reserve Enhancement Program project area.

5. Termination of Agreement

A. Refund Upon Termination. In the event this Agreement is terminated for any reason prior to the termination date set forth in Attachment 3, or the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER's right, title, or interest in the project area, or any portion thereof, the LANDOWNER shall within 90 days of the termination, sale, conveyance, or transfer of title or interest in the project area, refund to the STATE all payments made with respect to this Agreement. The STATE may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purpose of the Agreement.

B. Termination of Federal Conservation Reserve Program Agreement. The LANDOWNER's federal Conservation Reserve Program agreement under the Hawaii Conservation Reserve Enhancement Program with the U.S. Department of Agriculture is a prerequisite to, and underlies, this Agreement. Any violation or cancellation of the federal Conservation Reserve Program agreement immediately violates and cancels this agreement.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration and satisfaction of the management activities to be performed under this Agreement, the STATE and the LANDOWNER agree to the following:

1. State Funding Condition

If in any fiscal year the STATE does not appropriate, or the STATE does not approve the expenditure of, funds sufficient to meet the payment of the approved budget, this Agreement shall automatically terminate without penalty at the end of the last fiscal year for which funds have been appropriated and approved.

2. STATE's Payment

The STATE agrees to pay the LANDOWNER a total sum of _____ DOLLARS (\$_____.) for the satisfactory completion of the _____ Conservation Reserve Enhancement Program project as set forth in the approved Conservation Plan based on seventeen dollars (\$17.00) per acre per year of program enrollment. The _____ Conservation Reserve Enhancement Program project is measured at _____ (_____) acres. Payments shall be made by the STATE to the LANDOWNER as annual payments or as a one-time payment, as detailed in Attachment 2, Section 3 for the implementation of the Conservation Plan through the year 20____. All funds to be paid by the STATE to the LANDOWNER shall be encumbered on an annual basis.

3. Payment Schedule

YEAR	STATE PAYMENT
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
TOTAL	

* Payment equal to \$17/acre pre year for a 15 year agreement.

A. Initial/First Payment. Following the LANDOWNER's submission of a project report and invoice as provided in Attachment 1, Section 4.A.(i), the STATE shall pay to the LANDOWNER the total amount for year 1 of the Conservation Reserve Enhancement Program project. This payment shall be subject to the LANDOWNER's agreement to implement the conservation practices described in the approved Conservation Plan, submission of a project report with timeline and invoice, and the STATE's approval of the project report.

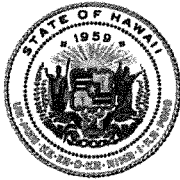
B. Annual and Final Payment. The LANDOWNER must submit an annual report and invoice to the STATE by March 1 of each year under this Agreement, as appropriate, for which funding has been approved in order to receive annual payment from the STATE. This payment shall be subject to the LANDOWNER's continued timely implementation of conservation practices, satisfactory completion of conservation practices, and maintenance of previously implemented conservation practices.

C. Reimbursement. If the conservation activities established under the Conservation Plan are damaged, destroyed, or otherwise suffer a deliberate loss of functional value, the LANDOWNER will reimburse the STATE for all funds expended under this agreement.

D. Unauthorized Work. The LANDOWNER shall not receive STATE funds for activities not designated in the approved CONSERVATION PLAN. All work completed by the LANDOWNER prior to receipt of a fully-executed copy of this AGREEMENT, prior to STATE approval of funding for any subsequent years, and prior to STATE approval of any subsequent amendments to the approved CONSERVATION PLAN, shall be at the LANDOWNER's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding or amendments applicable to such work are subsequently approved, the LANDOWNER may be paid for such work even if performed prior to such approval.

TIME SCHEDULE

The term of this Agreement is 15 (fifteen) years. This Agreement shall commence on _____, 20____ and terminate on _____, 20_____.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, LANDOWNER, the undersigned does declare as follows:

1. LANDOWNER ☐ is ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. LANDOWNER has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. LANDOWNER has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. LANDOWNER has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

LANDOWNER understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of

Ethics, including the provisions which are the source for the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

LANDOWNER:

By _____
(Signature)

Print Name _____

Print Title _____

Date: _____

**STATE OF HAWAII GENERAL
CONDITIONS FOR CONSERVATION RESERVE ENHANCEMENT PROGRAM**

1. Qualifying Standards.
 - a. The LANDOWNER is an eligible person as defined in 7 C.F.R. § 1410.5.
 - b. The project land to this Agreement is eligible under 7 C.F.R. § 1410.6 to be placed in the Hawaii Conservation Reserve Enhancement Program.
 - c. The LANDOWNER applied for participation in the Hawaii Conservation Reserve Enhancement Program and was approved by the U.S. Department of Agriculture as eligible for enrollment in the Hawaii Conservation Reserve Enhancement Program.
 - d. The U.S. Department of Agriculture Natural Resource Conservation Service has completed and approved a Conservation Plan for the LANDOWNER.
2. Statutory Conditions.
 - a. The LANDOWNER has agreed to and will during the term of this Agreement:
 - (1) Employ or have under contract persons qualified to engage in the activity to be funded under this Agreement.
 - (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability.
 - (3) Not use public funds for entertainment or lobbying activities.
 - (4) Comply with any other requirement that the Director of Finance or the Administrative Director of the Courts may prescribe to ensure adherence by the LANDOWNER to federal, state, and county laws.
 - b. The LANDOWNER shall allow the contracting agency, legislative committees and their staffs, and the auditor full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant or subsidy. This right of access shall last as long as the records and other related documents are retained.

3. Recordkeeping Requirements. The LANDOWNER shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the LANDOWNER's, performance under this Agreement. The LANDOWNER shall retain all records related to the LANDOWNER's performance under this Agreement for at least three (3) years after the date of submission of the LANDOWNER's Final Project Report.
4. Conflicts of Interest. The LANDOWNER represents that neither the LANDOWNER, nor any employee or agent of the LANDOWNER, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the LANDOWNER's performance under this Agreement.
5. Compliance with Laws. The LANDOWNER shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time that in any way affect the LANDOWNER's performance under this Agreement. This Agreement shall be subject to all limitations set forth in the regulations at 7 C.F.R. part 1410.
6. Indemnification and Defense. The LANDOWNER shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the LANDOWNER or LANDOWNER's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
7. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the LANDOWNER in connection with this Agreement, the LANDOWNER shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
8. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax and Other Responsibilities.
 - a. In the performance of this Agreement, the LANDOWNER is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the LANDOWNER is in compliance with this Agreement.

- b. The LANDOWNER and the LANDOWNER's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the LANDOWNER, and the LANDOWNER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
- c. The LANDOWNER shall be responsible for the accuracy, completeness, and adequacy of LANDOWNER's performance under this Agreement. Furthermore, the LANDOWNER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the LANDOWNER's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the LANDOWNER, or the LANDOWNER's employees or agents, in the course of their employment.
- d. The LANDOWNER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the LANDOWNER by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, and (iv) real property taxes. The LANDOWNER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The LANDOWNER shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The LANDOWNER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the LANDOWNER have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. The LANDOWNER shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, Hawaii Revised Statutes.
- f. The LANDOWNER shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, Hawaii Revised Statutes, and section 3-122-112, Hawaii Administrative Rules, that is current within six months of the date of issuance.
- g. The LANDOWNER shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, Hawaii

Administrative Rules, that is current within six months of the date of issuance.

- h. In lieu of the above-certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the LANDOWNER may submit proof of compliance through the State Procurement Office's designated certification process.
 - i. The LANDOWNER is responsible for securing all employee-related insurance coverage for the LANDOWNER and the LANDOWNER's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- 9. Payment Procedures. All payments under this Agreement shall be made only upon submission by LANDOWNER of original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.
- 10. Federal Funds. If this Agreement is payable in whole or in part from federal funds, LANDOWNER agrees that, as to the portion of the obligation under this Agreement to be payable out of federal funds, the LANDOWNER shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.
- 11. Publicity.
 - a. The LANDOWNER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the LANDOWNER's brochures, advertisements, or other publicity of the LANDOWNER without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources. All media contacts with the LANDOWNER about the subject matter of this Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife.
 - b. The LANDOWNER consents to the STATE's use of LANDOWNER and the property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program.

12. Confidentiality of Material.

- a. All material given to or made available to the LANDOWNER by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the LANDOWNER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the LANDOWNER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

13. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the LANDOWNER. Upon receipt of said notice, the LANDOWNER shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
- b. If, for any cause, the LANDOWNER breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the LANDOWNER's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written notice to the AWARDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the LANDOWNER of such termination at least thirty (30) calendar days before the effective date of such termination.
- c. Upon termination of the Agreement, the LANDOWNER, within thirty (30) days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the LANDOWNER shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the LANDOWNER under this Agreement.
- d. If this Agreement is terminated for cause, the LANDOWNER shall not be relieved of liability to the STATE for damages sustained because of any breach by the LANDOWNER of this Agreement. In such event, the

STATE may retain any amounts which may be due and owing to the LANDOWNER until such time as the exact amount of damages due to the STATE from the LANDOWNER has been determined. The STATE may also set off any damages so determined against the amounts retained.

14. Disputes. No dispute arising under this Agreement may be sued upon by the LANDOWNER until after the LANDOWNER's written request to the Chairperson of the State of Hawaii Department of Land and Natural Resources, to informally resolve the dispute is rejected, or until ninety (90) days after the Chairperson's receipt of the LANDOWNER's written request whichever comes first. While the Chairperson considers the LANDOWNER's written request, the LANDOWNER agrees to proceed diligently with the performance necessary to complete the Conservation Plan unless otherwise instructed in writing by the Chairperson.
15. State Remedies. The LANDOWNER understands that in the event that it no longer meets all of the standards and conditions set forth in paragraphs 1 and 2 of these General Conditions, or in the event that LANDOWNER fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to LANDOWNER under this Agreement.
16. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the LANDOWNER and the STATE.
17. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to be given to the STATE shall be sent to: Chairperson, Board of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii 96813. Notice to the LANDOWNER shall be sent to the LANDOWNER's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The LANDOWNER is responsible for notifying the DIRECTOR in writing of any change of address.
18. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the LANDOWNER's obligations under the statutes.
19. Severability. In the event that any provision of this Agreement is declared invalid

or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

20. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
21. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the LANDOWNER relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the LANDOWNER other than as set forth or as referred to herein.

Exhibit A
CONSERVATION PLAN

AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION
AND
THE STATE OF HAWAII
CONCERNING THE IMPLEMENTATION OF A
CONSERVATION RESERVE ENHANCEMENT PROGRAM AGREEMENT UNDER THE
CONSERVATION RESERVE PROGRAM
FOR THE ISLANDS OF MAUI, HAWAII, MOLOKAI, LANAI, KAUAI, AND OAHU

I. PURPOSE

This Agreement is between the Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) and the State of Hawaii (State) to implement a Conservation Reserve Enhancement Program (CREP) for the islands of Hawaii, Maui, Molokai, Lanai, Kauai and Oahu. The objectives of this CREP are to enhance stream water quality; reduce coral reef degradation and enhance near shore coastal waters; increase groundwater recharge; restore native, threatened and endangered species habitat; and control the spread of invasive species in upland areas in select areas of each of the six (6) main Hawaiian Islands.

II. GENERAL PROVISIONS

The State of Hawaii has identified degraded stream water quality and quantity, reduced groundwater recharge, polluted runoff to near-shore waters and coral reefs, and degraded terrestrial and aquatic wildlife habitat as significant problems in important watersheds and riparian areas on the six (6) main islands in the State. This CREP Agreement (Agreement) is designed to help reduce the impact of these problems by restoring riparian buffer areas and restoring forests on up to fifteen thousand (15,000) acres. Additional benefits associated with these activities will accrue through habitat restoration for threatened and endangered species, the control of invasive species, native forest restoration, and preservation of open space.

This Agreement is consistent with the goals and objectives of USDA and CCC as established for the Conservation Reserve Program (CRP) and the CREP. The State, represented by the Departments of Land and Natural Resources, Agriculture, Health, and the University of Hawaii at Manoa, will join with local watershed partnerships and other organizations to offer incentives to participants for the installation of riparian buffers, wetland restoration, and restoration of

forests. The Department of Land and Natural Resources (DLNR) will be the lead State partnering agency for this project.

Specifically, Hawaii CREP will strive to enroll up to fifteen thousand (15,000) acres of marginal pastureland (MPL) and cropland to restore riparian buffer zones, wetlands, and native forest areas in critical groundwater recharge zones. Enrollment on the islands will be phased in over a five (5) year period as outlined in Section IV. A. CRP contracts offered under this Hawaii CREP Agreement will be for fourteen (14) to fifteen (15) year durations. The non-Federal portion of this program will come from the State of Hawaii and in-kind contributions from local watershed partnerships and other organizations.

It is the intent of USDA-CCC and the State of Hawaii that this Agreement will seek to achieve the following goals for the six (6) main Hawaiian Islands as a whole when fully enrolled:

- A. A ten (10) percent reduction in sediment and nutrient runoff into streams, from current levels.
- B. A five (5) percent increase in coral reef cover and substantial increases in coral diversity on coral reefs throughout the State, from current levels.
- C. A ten (10) percent increase and improvement of wildlife and plant habitats of at least ten (10) endangered species through restoration of native forest ecosystems and riparian buffers, from current levels.
- D. Substantial reforestation of native vegetation in riparian buffer zones as well as rare and declining native habitats, from current levels.
- E. Substantial increases in groundwater recharge through the planting of trees in upland pastures, from current levels.
- F. Substantial reduction in and control of invasive species in watersheds within the CREP target areas and on enrolled MPL and cropland, from current levels.

The terms "cropland" and "marginal pastureland" (MPL), as used in this document, will have the meanings assigned to them in CCC's national CRP directives.

III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 *et seq.*) and regulations at 7 CFR part 1410 to perform all its activities contemplated by this Agreement.

Various participating agencies of the State of Hawaii are provided statutory authority to perform all activities contemplated by this Agreement and by provisions of the Hawaii Revised Statutes, Chapters 141, 152, 171, 180, 183, 183D, 195D, and 195F. Other authorities may also apply.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be promulgated by USDA/CCC, the State of Hawaii, or any other governmental entity participating in the CREP. This Agreement is intended to aid in the administration of the CRP. Other authorities may also apply.

IV. PROGRAM ELEMENTS

USDA, CCC, and the State agree that:

- A. The Hawaii CREP will consist of a Continuous USDA CRP sign-up into the CREP and a Hawaii incentive payment and technical assistance component. This project will seek to enroll eligible MPL and cropland under Water Resources practices and Forest Restoration practices within degraded watersheds in the counties of Hawaii, Maui, and Kauai, and of the City & County of Honolulu.

Offers for enrollment into the Hawaii CREP will be accepted according to the following:

- Years 1 & 2: Islands of Hawaii and Maui
- Year 3: Islands of Molokai and Lanai (and above islands)
- Year 4: Island of Kauai (and above islands)
- Year 5: Island of Oahu (and above islands)

Offers for enrollment will not be accepted from any other locations. See Exhibit 1, which is attached hereto and incorporated herein by reference, for the CREP project area.

- B. To be eligible, land must meet the eligibility criteria set forth in this Agreement and in the Farm Service Agency's (FSA) National CRP Directives and must be located in the CREP project area islands listed in Section IV. A.
- C. The following Water Resources and Forest Restoration provisions will apply to eligibility criteria, Federal payment incentives, and practices for land enrolled under this Agreement:
- (1) Water Resources Practices - Approximately thirteen thousand (13,000) acres of MPL and cropland acres will be targeted for enrollment as Water Resources practices. These practices will be offered primarily to achieve

water quality and water conservation. Additional wildlife benefits are also planned to be achieved through these practices.

- a. Available Practices - For lands that qualify for Water Resources practices, the available CRP conservation practices (CP), as detailed in FSA National Directives as amended by State supplements, will be:
 - CP22 - Riparian Buffer (for Cropland and MPL)
 - CP23 - Wetland Restoration, Floodplains (for Cropland only)
 - CP23A - Wetland Restoration, Non-Floodplains (for Cropland only)
 - CP25 - Rare and Declining Habitat (for Cropland only)
 - CP29 - Marginal Pastureland Wildlife Habitat Buffer (for MPL only)
 - CP30 - Marginal Pastureland Wetland Buffer (for MPL only)
- b. Eligible Land - Riparian buffer practices CP22, CP29, and CP30 will meet all eligibility criteria established in National CRP Directives except that the average widths for these buffers will have a minimum of thirty (30) feet and will not exceed one thousand three hundred twenty (1,320) feet. The portion of the buffer extending past one hundred eighty (180) feet up to one thousand three hundred twenty (1,320) feet must be determined highly erodible land by USDA. Additional infeasible-to-farm buffer width criteria will apply to maximum average buffer widths for cropland enrolled under practice CP22 as outlined in National CRP Directives. The cropland-only practice CP25 will only be available on "cropland," as defined by National CRP Directives, and on land that is determined highly erodible land by USDA or is located within a State conservation priority area, and meets all other eligibility criteria established in National CRP Directives.
- c. Federal Rental Rates and Incentives - MPL enrolled under Water Resources practices will receive an enhanced per acre Annual Rental Payment as described in Section V. B. of this Agreement. In addition, a practice incentive, a signing incentive, and a wetland hydrology restoration incentive payment(s) may be available for applicable practices to the extent provided in Section V. E. of this Agreement.
- d. Practice Provisions - All practices enrolled under Water Resources practices will adhere to practice standards and criteria outlined in National CRP Directives, as amended by State FSA directive supplements. All installed practices must also be implemented in

accordance with USDA policies for similar enrollments. Other practice provisions, to be outlined in a published State FSA directive supplement for the Hawaii CREP, will also apply.

- (2) Forest Restoration Practices - Approximately two thousand (2,000) cropland acres will be targeted for enrollment as Forest Restoration practices. These practices will be offered to achieve forestry and wildlife benefits.
 - a. Available Practices - For lands that qualify for Forest Restoration practices the available CRP CP's will be:
 - CP3A – Hardwood Tree Planting (for Cropland only)
 - CP25 – Rare and Declining Habitat (for Cropland only)
 - b. Eligible Land - Cropland practices CP3A and CP25 will only be eligible on cropland that is either determined to be highly erodible by USDA or is located within a State conservation priority area, and meets all other eligibility criteria established in National CRP Directives.
 - c. Federal Rental Rates and Incentives - Land enrolled under Forest Restoration practices will receive an enhanced per acre Annual Rental Payment as described in Section V. B. of this Agreement. Practice incentive, signing incentive and wetland hydrology restoration incentive payments will not be available for Forest Restoration practices.
 - d. Practice Provisions - All practices enrolled under Forest Restoration practices must adhere to practice standards and criteria outlined in National CRP Directives, as enhanced by State FSA directive supplements. All installed practices must also be implemented in accordance with USDA policies for similar enrollments. Other practice provisions, to be outlined in a published State FSA directive supplement for the Hawaii CREP, will also apply.
- D. In determining USDA's share of the cost of practice establishment, USDA will follow National CRP Directives, and cannot exceed 50% of the total cost.
- E. The CRP contracts for acres enrolled in this CREP will be for a period of fourteen (14) to fifteen (15) years. For purposes of the Hawaii CREP, all practices will be eligible for enrollment on a year-round continuous signup basis.
- F. Eligible producers in the CREP project area may also continue to offer other eligible acreage for a non-CREP, normal enrollment during any applicable CRP

general and continuous enrollment periods, to the extent they are otherwise eligible for such normal enrollments.

- G. No lands may be enrolled under this program until the USDA CREP Program Manager concurs with a detailed State FSA directive supplement for the Hawaii CREP, which will provide a thorough description of this program, applicable practice provisions, and operating procedures, and until completion of the appropriate level of documentation required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et. seq.*, as amended, and in accordance with 7 CFR 799.
- H. For purposes of the Hawaii CREP, lands enrolled in the CRP may also be voluntarily entered into a State, County or Private perpetual conservation easement program to run concurrent with and beyond the CRP contract period. All such easements filed will provide that the CRP contract provisions will prevail during the CRP contract period. Landowners may also participate in other State landowner assistance programs, provided that there is no overlap for practices or matching funds. In no case will CREP participants be eligible to receive, from any or all sources, cost-share for over one hundred percent (100%) of the cost of conservation practice establishment, and the CCC contribution cannot exceed 50% for any CRP-related activities or 0% for activity beyond compliance with the CRP contract.
- I. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR Part 1410, and the provisions of this Agreement. In the event of a conflict, the CRP regulations will be controlling.
- J. Incentive payments made under Section V. of this Agreement will be considered rental payments for USDA payment limitation purposes.

V. FEDERAL COMMITMENTS

Subject to the availability of funds and statutory limitations USDA agrees to:

- A. Determine land and producer eligibility for participation in the CRP portion of this CREP project consistent with, and subject to, the regulations at 7 CFR Part 1410, and administer those CRP contracts that are executed.
- B. Make annual rental payments under the CRP contracts. This per acre annual payment will be determined using the sum of two components:
 - (1) A rental payment calculated as follows:

- a. A Soil Rental Rate (SRR) for all enrolled eligible cropland according to FSA National Directives based on the weighted local average soil rental rate of the three predominant soils offered, or
 - b. A MPL Rental Rate of Forty Three and No/100 Dollars (\$43) per acre for MPL enrolled in this CREP, except that eligible MPL located within or immediately adjacent to a Federally designated critical or recovery habitat area will receive a rental payment equivalent to the current posted local CRP MPL per acre rental rate. Eligible MPL that qualifies for this latter rate will consist only of lands within or immediately adjacent to Federally listed critical or recovery habitat for threatened and endangered species as designated by the U.S. Fish and Wildlife Service; and
- (2) A Maintenance Payment as outlined in National CRP Directives.
- C. Cost-share with producers up to fifty percent (50%) of the eligible reimbursable establishment costs of all approved CRP conservation practices. Cost-share will be made available for exclusionary fencing and alternative livestock watering facilities for all Hawaii CREP conservation practices as determined in accordance with current CCC policies for riparian buffers. Cost-share rates used will be rates established following National CRP Directives.
- D. Make mid-contract management payments of up to Four Hundred Fifty and No/100 Dollars (\$450) per acre over the life of the CRP contract, including invasive species control measures, to be established and determined in accordance with National CRP Directives. For payment limitation and other purposes relevant to the conduct of the CRP, this \$450 payment will be considered a supplement to the rental payment; CRP rules limit the amount of a rental payment per "person" (as defined by regulation) that can be received in a year.
- E. Make a one-time Sign-up Incentive Payment, Practice Incentive Payment, and /or other one-time incentive payment for restoration of wetland hydrology only for the applicable practices as outlined in National CRP Directives, and as calculated and determined according to National CRP Directives. As with the payments in "D," these one-time payments will be accounted for as rental payments for payment limitation purposes.
- F. Administer CRP contracts for lands approved under this CREP.
- G. Develop and review CRP conservation plans to address identified natural resource problems by devoting eligible land to approved CRP practices for applicants offering to enroll eligible acreage in the CREP.

- H. Conduct normal annual compliance reviews in accordance with National CRP Directives to ensure compliance with the CRP contract.
- I. Provide information to landowners concerning the Hawaii CREP program.
- J. Permit successors-in-interest for enrolled lands to enroll in CRP contracts under this CREP in the same manner as allowed for under normal CRP contracts.

VI. STATE COMMITMENTS

The State agrees to:

- A. Contribute matching funds equal to not less than twenty percent (20%) of the total project cost for this Agreement. It is understood that the State's ability to comply with this level of funding is subject to annual appropriation and approval for expenditure. For purposes of this obligation, of the twenty percent (20%) contribution by the State, fifty percent (50%) of that contribution will be in the form of direct incentive payments to landowners to encourage participation in conservation practices and payment for Hawaii's CREP Administrative Coordinator, as detailed in Sections VI. B and VI.C, respectively, and the remaining fifty percent (50%) of that contribution will be in the form of in-kind contributions, including contributions from non-Federal and non-participating private partners, as detailed in Section VI. D. The State and private partners will contribute in-kind services and supportive State expenditures for watershed management, invasive species control, stream restoration, reforestation and program administration. The State will also provide personnel to oversee implementation, monitoring, and evaluation of the project on a State-wide basis, the cost of which will be counted toward the State's direct incentive contribution to the project cost.
- B. Make contributions in the form of a direct incentive payment to participants as follows:
 - (1) This payment will be made in the form of an annual Hawaii CREP Incentive Payment (HCIP) in the amount of up to Seventeen and No/100 Dollars (\$17) per acre per year for enrollment into any approved CRP practices for the fourteen (14) to fifteen (15) year CRP contract duration. The State's total HCIP outlays may be limited at the State's discretion to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) annually, or Five Million and No/100 Dollars (\$5,000,000) over the term of this Agreement, and will be subject to annual appropriation and approval for expenditure;
 - (2) HCIP funds not used for CRP contracts may be made available to landowners in CREP watersheds for the purchase of permanent

Conservation Easements (CE). All interested landowners will have the opportunity to donate a CE in a CREP watershed. The State's contribution for this purpose may also include new funds provided in conjunction with the State of Hawaii Legacy Land Conservation Fund for purchase of CEs in CREP watersheds, and will be counted toward the State's obligation to meet the direct incentive contribution requirement of section VI.A.; and

- (3) HCIP funds not used for CRP contracts may also be for reimbursement of eligible cost-share practices. Eligible practices are to be determined by the State each year and will be available to enrolled participants.
 - (4) Any limit on State or related expenditures provided for in this section or Agreement, such as the limits in (1), will have no effect on the obligation of the State to cover 20 percent of the full cost of the program, but rather that obligation will abide despite that limit. If, for any reason, the State cannot meet that limit, it will so inform CCC, which will then decide whether to end the Agreement in the manner elsewhere provided for in this document.
- C. Appoint a State CREP Administrative Coordinator responsible for, during the life of this Agreement, administering the State's obligations under this Agreement and facilitating enrollment and program success. Expenditures for salary and overhead of State CREP Coordinator, estimated at Fifty Thousand and No/100 Dollars (\$50,000) annually, will be subject to annual appropriation, and will count toward the State's direct incentive contribution requirement of section VI.A.
- D. Document expenditures made toward the State's in-kind contribution requirement for the CREP from various sources, to the extent they are expended in CREP watersheds, which will include, but are not limited to, the following expenditures made for the following reasons, and from the following sources:
- (1) Management and control of invasive species, restoration of watersheds, or erosion control in CREP watersheds (Natural Area Reserve funding, State Forest Stewardship Program funding, Watershed Partnership funding);
 - (2) Invasive species control and monitoring in CREP watersheds (Invasive Species Committee expenditures, DLNR-DOFAW field crews invasive species control expenditures, Natural Area Partnership Program funding, Watershed Partnership funding);
 - (3) Watershed restoration funding in CREP watersheds (Natural Area Reserves Partnership Program funding, State Forest Stewardship Program funding to private landowners, Watershed Partnership funding);
 - (4) Near shore marine and coral reef monitoring and management funds in areas below CREP watersheds; and

- (5) Conservation easements on private land in CREP watersheds donated by private landowners and other landowner contributions.
- E. Enter into a memorandum of understanding or other appropriate Agreement with private partners to coordinate the portion of the program that will provide non-State funding or in-kind services for the Hawaii CREP program, such as watershed partnership Agreements.
- F. Identify which lands and watersheds may be considered for enrollment in CREP for the purposes of this Agreement. Assist federal partners with seeking applicants willing to offer eligible and appropriate land for enrollment in the CREP.
- G. Assist the USDA's Natural Resource Conservation Service (NRCS) and other conservation partners, where resources are available, in providing technical assistance to develop conservation plans for applicants offering to enroll eligible acreage in the CREP.
- H. Convene and participate in meetings of a CREP Review Committee that will be scheduled to meet at least annually to review the Hawaii CREP and will consist of state representatives involved in the Hawaii CREP from FSA, NRCS, DLNR, and other State agencies as appropriate. The CREP Review Committee will discuss, but is not limited to, the program's functioning and technical aspects, and will provide recommendations on the improvement of CREP to maximize participation and overall environmental benefits. The CREP Review Committee will provide their findings to the FSA to be included in the annual report outlined in Section VI. J. The State will also coordinate between other State administered committees concerning CREP implementation and accomplishments as appropriate.
- I. Implement, in collaboration with federal partners, a communication plan within other State and federal agencies for the purposes of outreach to landowners, coordination between other agricultural and natural resources conservation programs administered in the State, and to provide public information and education regarding the CREP.
- J. Provide summaries of annual water quality monitoring and evaluation reports as they relate to the CREP watersheds. And, by October 1 of each year, provide a report to the USDA FSA summarizing the status of enrollments under the CREP and progress on other commitments of this program, including goals outlined in Section II. The annual report to FSA will include:
 - (1) The level of program participation;
 - (2) The results of the annual water quality monitoring program;

- (3) Amount of acres enrolled under watershed and habitat restoration programs;
 - (4) Results of coral reef assessment and monitoring programs;
 - (5) Invasive species control targeted acreages;
 - (6) A summary of non-Federal CREP program expenditures; and
 - (7) Recommendations to improve the program as identified by the CREP Advisory Committee.
- K. Provide a summary report, by October 1 of each year, of the federal and State monies expended for the program. In order to determine the combined costs of CREP for purposes of the twenty percent (20%) State match requirement, the following costs will be used:
- (1) The total land rental cost, which will include the CRP payments made by USDA;
 - (2) One-time cost-share and incentive payments paid by USDA;
 - (3) The direct incentive contributions made by the State as detailed in Section VI. A., VI. B., and VI. C, including costs associated with the administration of the project by the CREP Administrative Coordinator, whose responsibilities include but are not limited to the items outlined in Section VI. F., VI. H., VI. I., VI. J., and VI. K.;
 - (4) Cost of conservation easements incurred by the State and associated monitoring costs, if any; and
 - (5) In-kind contributions made by the State, including costs of administering the program and technical assistance, and items outlined in Sections VI. D., VI. E., and VI. G.

The State may treat, in furtherance of the provisions of this Agreement, contributions in connection with the program by collaborative non-Federal and non-participating private partners as contributions by the State.

- L. Temporarily release participants from any contractual or easement restriction on crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture or the State of Hawaii in order to address a State or national emergency.

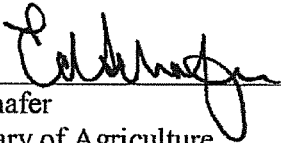
VII. MISCELLANEOUS PROVISIONS

- A. All CRP contracts executed under this Agreement will be subject to all limitations set forth in the regulations at 7 CFR Part 1410 including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between participants and the applicable agencies of Hawaii may impose additional conditions not in conflict with those applicable under the regulations at 7 CFR Part 1410 and which may be subject to review by USDA.
- B. Neither Hawaii, nor the USDA, will assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- C. Hawaii and the USDA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and will not be responsible for the results thereof caused by the acts or omissions of the other party.
- D. USDA may enter into CREP contracts for fully eligible persons and land provided that the statutory CREP project enrollment limit has not been reached, and that such actions are otherwise authorized by law.
- E. All financial commitments of the USDA/CCC and Hawaii are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within thirty (30) days and any necessary modifications or termination will be made to this Agreement. This Agreement may be terminated by either party at any time after written notice. Such termination of this Agreement will not alter responsibilities regarding existing contractual obligations established under the Hawaii CREP and all Hawaii payments between participants and USDA or CCC, or between participants and Hawaii.
- F. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee or successor, is delegated authority to carry out this Agreement and, with the Governor of Hawaii, the Governor's designee or successor, or the Board of Land and Natural Resources, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The provisions of this Agreement may only be modified by written Agreement between the parties.
- G. The U.S. Department of Agriculture generally prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications

at 202-720-5881 (voice) or 202-720-7808 (TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC, 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF AGRICULTURE AND THE COMMODITY CREDIT CORPORATION



Ed Schafer
Secretary of Agriculture

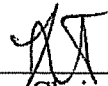
15 Jan '09
Date

FOR THE STATE OF HAWAII



Linda Lingle
Governor of the State of Hawaii

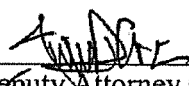
11/7/09
Date



Laura H. Thielen, Chairperson
Board of Land and Natural Resources
State of Hawaii

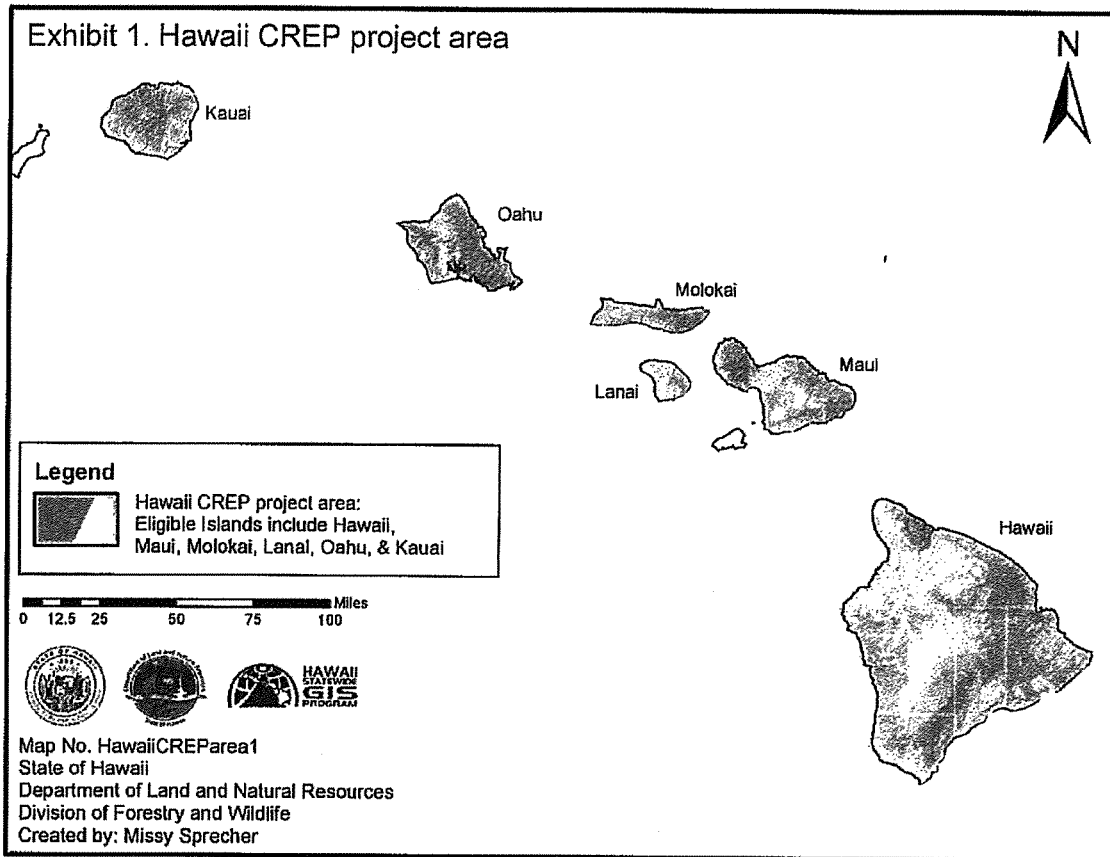
12/5/08
Date

Approved as to Form:



Deputy Attorney General
State of Hawaii

12/21/08
Date



**STATE OF HAWAII
CONSERVATION RESERVE ENHANCEMENT PROGRAM
AGREEMENT**

This Agreement, entered into on _____, 20_____, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (“STATE”), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the National Tropical Botanical Garden, a 501(c)(3) District of Columbia not-for-profit corporation (“LANDOWNER”), whose address is as follows: _____

Address

RECITALS

WHEREAS, the purpose of Chapter 195F, Hawaii Revised Statutes (“HRS”), is to establish a program to financially assist landowners in managing, protecting, and restoring important natural resources in Hawaii’s forested and formerly forested lands;

WHEREAS, the objectives of the Agreement between the U.S. Department of Agriculture Commodity Credit Corporation and the State of Hawaii Concerning the Implementation of a Conservation Reserve Enhancement Program for the Islands of Maui, Hawaii, Molokai, Lanai, Kauai, and Oahu dated January 15, 2009, are to enhance stream water quality; reduce coral reef degradation and enhance near shore coastal waters; increase groundwater recharge; restore native, threatened and endangered species habitat; and control the spread of invasive species in upland areas in select areas of each of the six (6) main Hawaiian Islands;

WHEREAS, under HRS § 195F-4(a)(1) money from the Forest Stewardship Fund may be used for payments by the STATE pursuant to agreements made with qualified landowners to further the purposes of Chapter 195F, HRS;

WHEREAS, LANDOWNER owns or controls land on the Island of Maui, conducive to the objectives of the Hawaii Conservation Reserve Enhancement Program and desires to enroll in the Hawaii Conservation Reserve Enhancement Program;

WHEREAS, the U.S. Department of Agriculture Natural Resource Conservation Service has completed and approved a Conservation Plan for the LANDOWNER, as set forth in Exhibit A to this Agreement, which the STATE agrees is consistent with the policies, goals, and objectives of the Hawaii Conservation Reserve Enhancement Program;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the LANDOWNER agree as follows:

A. SCOPE OF PERFORMANCE

The LANDOWNER shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the "Scope of Performance" set forth in Attachment 1 and the Conservation Plan set forth in Exhibit A, both of which are hereby made a part of this Agreement.

B. COMPENSATION

The LANDOWNER shall be compensated for performance of the project under this Agreement according to the "Compensation and Payment Schedule," set forth in Attachment 2, which is hereby made a part of this Agreement.

C. TIME OF PERFORMANCE

The performance required of the LANDOWNER under this Agreement shall be completed in accordance with the "Time Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.

D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

The "State of Hawaii Certificate of Exemption from Civil Service," set forth in Attachment 4, is hereby made a part of this Agreement.

E. STANDARDS OF CONDUCT DECLARATION

The "Standards of Conduct Declaration" by LANDOWNER, set forth in Attachment 5, is hereby made a part of this Agreement.

F. OTHER TERMS AND CONDITIONS

The "State of Hawaii General Conditions for Conservation Reserve Enhancement Program" set forth in Attachment 6, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the LANDOWNER have executed this Agreement effective as of the date first above written.

STATE OF HAWAII

Chairperson
Board of Land and Natural Resources

Date: _____

LANDOWNER

By _____

Its Chief Operating Officer *
(Title)

National Tropical Botanical Garden
Print Name

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

*Evidence of authority of the LANDOWNER's representative to sign this Agreement for the LANDOWNER must be attached.

LANDOWNER'S ACKNOWLEDGMENT

STATE OF HAWAII)
)
COUNTY OF _____) SS.

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the Chief Operating Officer of National Tropical Botanical Garden, the LANDOWNER named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the LANDOWNER, and acknowledges that he/she executes said instrument as the free act and deed of the LANDOWNER.

Notary Public, State of Hawaii

My commission expires: _____

Notary Seal Affixed:

SCOPE OF PERFORMANCE

1. Project Description

The LANDOWNER shall use funds paid by the STATE from the Forest Stewardship Fund to implement the approved Conservation Plan, which is attached hereto as Exhibit A. The project area to be managed is the National Tropical Botanical Garden Conservation Reserve Enhancement Program project area; TMK NUMBER(S) portion and designated on the map attached to the Conservation Plan.

2. Performance

The LANDOWNER shall complete the following:

A. Conservation Plan. The LANDOWNER shall carry out the conservation activities set forth in the approved Conservation Plan, attached as Exhibit A to this Agreement.

B. Consultation. The LANDOWNER shall be available for consultation regarding the LANDOWNER's progress with the Conservation Plan, upon request by the STATE.

3. Authority to Enter Into Agreement and Carry Out Conservation Plan

The LANDOWNER hereby represents that the LANDOWNER owns or controls the project area, and that the LANDOWNER has the authority to enter into this Agreement and complete the conservation activities set forth in the Conservation Plan.

4. Reporting and Inspections

A. Reports. The LANDOWNER shall submit to the STATE, reports at the following times:

(i) Initial/First Report. A report shall be due 30 days after the execution of this Agreement. The report shall include a timeline of action for the implementation of the conservation practices set forth in the Conservation Plan and shall include a separate invoice for payment as detailed in the payment schedule in Attachment 2, section 3.A.

(ii) Annual Report. An annual report shall be due on or before July 15 of each year under this Agreement for which funding has been approved. The report shall include a description of the Conservation Plan accomplishments and activities including the initiation of conservation practices, completion of conservation practices, and/or maintenance of conservation practices as described in the Conservation Plan. Following the completion of any conservation practices under this Agreement carried out under the Conservation Plan, the corresponding annual report shall include a detailed accounting of expenditures for each practice.

B. Inspections. The STATE reserves the right to enter upon the LANDOWNER's property for the purpose of inspecting the Conservation Reserve Enhancement Program project area.

5. Termination of Agreement

A. Refund Upon Termination. In the event this Agreement is terminated for any reason prior to the termination date set forth in Attachment 3, or the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER's right, title, or interest in the project area, or any portion thereof, the LANDOWNER shall within 90 days of the termination, sale, conveyance, or transfer of title or interest in the project area, refund to the STATE all payments made with respect to this Agreement. The STATE may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purpose of the Agreement.

B. Termination of Federal Conservation Reserve Program Agreement. The LANDOWNER's federal Conservation Reserve Program agreement under the Hawaii Conservation Reserve Enhancement Program with the U.S. Department of Agriculture is a prerequisite to, and underlies, this Agreement. Any violation or cancellation of the federal Conservation Reserve Program agreement immediately violates and cancels this agreement.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration and satisfaction of the management activities to be performed under this Agreement, the STATE and the LANDOWNER agree to the following:

1. State Funding Condition

If in any fiscal year the STATE does not appropriate, or the STATE does not approve the expenditure of, funds sufficient to meet the payment of the approved budget, this Agreement shall automatically terminate without penalty at the end of the last fiscal year for which funds have been appropriated and approved.

2. STATE's Payment

The STATE agrees to pay the LANDOWNER a total sum of five hundred ten and no hundredths DOLLARS (\$510.00) for the satisfactory completion of the National Tropical Botanical Garden Conservation Reserve Enhancement Program project as set forth in the approved Conservation Plan based on seventeen dollars (\$17.00) per acre per year of program enrollment. The National Tropical Botanical Garden Conservation Reserve Enhancement Program project is measured at _____ () acres. Payments shall be made by the STATE to the LANDOWNER as annual payments or as a one-time payment, as detailed in Attachment 2, Section 3 for the implementation of the Conservation Plan through the year 20_____. All funds to be paid by the STATE to the LANDOWNER shall be encumbered on an annual basis.

3. Payment Schedule

YEAR	STATE PAYMENT
FY11 -2011	\$510.00

* Payment equal to \$17/acre per year for a 15 year agreement.

A. Initial/First Payment. Following the LANDOWNER's submission of a project report and invoice as provided in Attachment 1, Section 4.A.(i), the STATE shall pay to the LANDOWNER the total amount for year 1 of the Conservation Reserve Enhancement Program project. This payment shall be subject to the LANDOWNER's agreement to implement the conservation practices described in the approved Conservation Plan, submission of a project report with timeline and invoice, and the STATE's approval of the project report.

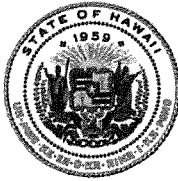
B. Annual and Final Payment. The LANDOWNER must submit an annual report and invoice to the STATE by March 1 of each year under this Agreement, as appropriate, for which funding has been approved in order to receive annual payment from the STATE. This payment shall be subject to the LANDOWNER's continued timely implementation of conservation practices, satisfactory completion of conservation practices, and maintenance of previously implemented conservation practices.

C. Reimbursement. If the conservation activities established under the Conservation Plan are damaged, destroyed, or otherwise suffer a deliberate loss of functional value, the LANDOWNER will reimburse the STATE for all funds expended under this agreement.

D. Unauthorized Work. The LANDOWNER shall not receive STATE funds for activities not designated in the approved CONSERVATION PLAN. All work completed by the LANDOWNER prior to receipt of a fully-executed copy of this AGREEMENT, prior to STATE approval of funding for any subsequent years, and prior to STATE approval of any subsequent amendments to the approved CONSERVATION PLAN, shall be at the LANDOWNER's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding or amendments applicable to such work are subsequently approved, the LANDOWNER may be paid for such work even if performed prior to such approval.

TIME SCHEDULE

The term of this Agreement is 15 (fifteen) years. This Agreement shall commence on _____, 20____ and terminate on _____, 20_____.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of National Tropical Botanical Garden, LANDOWNER, the undersigned does declare as follows:

1. LANDOWNER ☐ is ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. LANDOWNER has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. LANDOWNER has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. LANDOWNER has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

LANDOWNER understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of

Ethics, including the provisions which are the source for the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

LANDOWNER:

By _____
(Signature)

Print Name _____
National Tropical Botanical Garden

Print Title Chief Operating Officer

Date: _____

**STATE OF HAWAII GENERAL
CONDITIONS FOR CONSERVATION RESERVE ENHANCEMENT PROGRAM**

1. Qualifying Standards.

- a. The LANDOWNER is an eligible person as defined in 7 C.F.R. § 1410.5.
- b. The project land to this Agreement is eligible under 7 C.F.R. § 1410.6 to be placed in the Hawaii Conservation Reserve Enhancement Program.
- c. The LANDOWNER applied for participation in the Hawaii Conservation Reserve Enhancement Program and was approved by the U.S. Department of Agriculture as eligible for enrollment in the Hawaii Conservation Reserve Enhancement Program.
- d. The U.S. Department of Agriculture Natural Resource Conservation Service has completed and approved a Conservation Plan for the LANDOWNER.

2. Statutory Conditions.

- a. The LANDOWNER has agreed to and will during the term of this Agreement:
 - (1) Employ or have under contract persons qualified to engage in the activity to be funded under this Agreement.
 - (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability.
 - (3) Not use public funds for entertainment or lobbying activities.
 - (4) Comply with any other requirement that the Director of Finance or the Administrative Director of the Courts may prescribe to ensure adherence by the LANDOWNER to federal, state, and county laws.
- b. The LANDOWNER shall allow the contracting agency, legislative committees and their staffs, and the auditor full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant or subsidy. This right of access shall last as long as the records and other related documents are retained.

3. Recordkeeping Requirements. The LANDOWNER shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the LANDOWNER's, performance under this Agreement. The LANDOWNER shall retain all records related to the LANDOWNER's performance under this Agreement for at least three (3) years after the date of submission of the LANDOWNER's Final Project Report.
4. Conflicts of Interest. The LANDOWNER represents that neither the LANDOWNER, nor any employee or agent of the LANDOWNER, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the LANDOWNER's performance under this Agreement.
5. Compliance with Laws. The LANDOWNER shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time that in any way affect the LANDOWNER's performance under this Agreement. This Agreement shall be subject to all limitations set forth in the regulations at 7 C.F.R. part 1410.
6. Indemnification and Defense. The LANDOWNER shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the LANDOWNER or LANDOWNER's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
7. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the LANDOWNER in connection with this Agreement, the LANDOWNER shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
8. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax and Other Responsibilities.
 - a. In the performance of this Agreement, the LANDOWNER is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the LANDOWNER is in compliance with this Agreement.

- b. The LANDOWNER and the LANDOWNER's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the LANDOWNER, and the LANDOWNER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
- c. The LANDOWNER shall be responsible for the accuracy, completeness, and adequacy of LANDOWNER's performance under this Agreement. Furthermore, the LANDOWNER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the LANDOWNER's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the LANDOWNER, or the LANDOWNER's employees or agents, in the course of their employment.
- d. The LANDOWNER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the LANDOWNER by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, and (iv) real property taxes. The LANDOWNER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The LANDOWNER shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The LANDOWNER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the LANDOWNER have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. The LANDOWNER shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, Hawaii Revised Statutes.
- f. The LANDOWNER shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, Hawaii Revised Statutes, and section 3-122-112, Hawaii Administrative Rules, that is current within six months of the date of issuance.
- g. The LANDOWNER shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, Hawaii

Administrative Rules, that is current within six months of the date of issuance.

- h. In lieu of the above-certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the LANDOWNER may submit proof of compliance through the State Procurement Office's designated certification process.
 - i. The LANDOWNER is responsible for securing all employee-related insurance coverage for the LANDOWNER and the LANDOWNER's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- 9. Payment Procedures. All payments under this Agreement shall be made only upon submission by LANDOWNER of original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.
- 10. Federal Funds. If this Agreement is payable in whole or in part from federal funds, LANDOWNER agrees that, as to the portion of the obligation under this Agreement to be payable out of federal funds, the LANDOWNER shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.
- 11. Publicity.
 - a. The LANDOWNER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the LANDOWNER's brochures, advertisements, or other publicity of the LANDOWNER without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources. All media contacts with the LANDOWNER about the subject matter of this Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife.
 - b. The LANDOWNER consents to the STATE's use of LANDOWNER and the property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program.

12. Confidentiality of Material.

- a. All material given to or made available to the LANDOWNER by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the LANDOWNER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the LANDOWNER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

13. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the LANDOWNER. Upon receipt of said notice, the LANDOWNER shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
- b. If, for any cause, the LANDOWNER breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the LANDOWNER's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written notice to the AWARDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the LANDOWNER of such termination at least thirty (30) calendar days before the effective date of such termination.
- c. Upon termination of the Agreement, the LANDOWNER, within thirty (30) days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the LANDOWNER shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the LANDOWNER under this Agreement.
- d. If this Agreement is terminated for cause, the LANDOWNER shall not be relieved of liability to the STATE for damages sustained because of any breach by the LANDOWNER of this Agreement. In such event, the

STATE may retain any amounts which may be due and owing to the LANDOWNER until such time as the exact amount of damages due to the STATE from the LANDOWNER has been determined. The STATE may also set off any damages so determined against the amounts retained.

14. Disputes. No dispute arising under this Agreement may be sued upon by the LANDOWNER until after the LANDOWNER's written request to the Chairperson of the State of Hawaii Department of Land and Natural Resources, to informally resolve the dispute is rejected, or until ninety (90) days after the Chairperson's receipt of the LANDOWNER's written request whichever comes first. While the Chairperson considers the LANDOWNER's written request, the LANDOWNER agrees to proceed diligently with the performance necessary to complete the Conservation Plan unless otherwise instructed in writing by the Chairperson.
15. State Remedies. The LANDOWNER understands that in the event that it no longer meets all of the standards and conditions set forth in paragraphs 1 and 2 of these General Conditions, or in the event that LANDOWNER fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to LANDOWNER under this Agreement.
16. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the LANDOWNER and the STATE.
17. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to be given to the STATE shall be sent to: Chairperson, Board of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii 96813. Notice to the LANDOWNER shall be sent to the LANDOWNER's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The LANDOWNER is responsible for notifying the DIRECTOR in writing of any change of address.
18. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the LANDOWNER's obligations under the statutes.
19. Severability. In the event that any provision of this Agreement is declared invalid

or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

20. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
21. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the LANDOWNER relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the LANDOWNER other than as set forth or as referred to herein.

Exhibit A

CONSERVATION PLAN